

COOPER & DUNHAM LLP

ATTORNEYS AT LAW

1185 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK 10035

TELEPHONE: (212) 278-0400

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED:
--

IVAN S. KAYRUKOV
PETER D. MURRAY
WILLIAM E. PELTON
ROBERT D. KATZ
PAUL TENG
WENDY E. MILLER
PETER J. PHILLIPS
RICHARD F. JAWORSKI
DANIEL J. AMOS
GREGORY J. CARBO
MICHAEL LIN
JENNIFER HAK

NORMAN H. ZIVIN
JOHN P. WHITE
ROBERT D. HOROWITZ
ERIC D. KIRSCH
GARY J. GERSHIN
ROBERT T. MALDONADO
RICHARD S. MILNER
AUDE GERSPACHER
TONIA A. SAYOUR
KINDY R. OYM
LETITIA A. DEGRASSE

NEW YORK STATE BAR ADMISSION PENDING

FACSIMILE: (212) 391-0525
(212) 391-0526
(212) 391-0630
(212) 391-0631
(212) 827-0247

OF COUNSEL
CHRISTOPHER C. DUNHAM

SCIENTIFIC ADVISOR
JAMES R. MAJOR, D. PHIL
PAMELA J. SAVAGE, PH.D.
JACK ROSA, PH.D.

REGISTERED PATENT AGENT
ANDREW CHUNG, B.E.

FOUNDED 1887
www.cooperdunham.com

July 16, 2008

BY FACSIMILE

Hon. Kenneth M. Karas
United States Courthouse
300 Quarropas St., Room 533
White Plains, NY 10601

MEMO ENDORSED

Re: Koninklijke Philips Electronics N.V., et al. v. Optical Experts Manufacturing, Inc., et al.; Civil Action No. 08-4071 (KMK)

Your Honor:

We represent Defendant Brilliance Audio, Inc. ("Brilliance") in the above-referenced matter. Further to my phone conversation with Alicia from Your Chambers, wherein we were given permission to file this letter by facsimile, we write to request a pre-motion conference seeking permission to file a Motion to Dismiss Patent Infringement Claims Against Brilliance Audio, Inc.

Philips has failed to state plausible grounds for relief on its patent infringement claims against Brilliance. According to the First Amended Complaint, all of the allegedly infringing goods sold by Brilliance were purchased from defendant Optical Experts Manufacturing, Inc. ("OEM"), who, according to Philips's First Amended Complaint, has a valid license agreement from Philips with respect to the patent-in-suit. See First Amended Complaint, ¶72. A valid license provides a complete defense to Philips' infringement claims against Brilliance under the doctrine of patent exhaustion, which precludes a patent owner from asserting patent rights against subsequent purchasers of authorized goods. See *Quanta Computer, Inc. v. LG Electronics, Inc.*, 128 S. Ct. 2109, 2115 (2008). Philips therefore has not stated a claim against Brilliance on which relief can be granted.

Accordingly, defendants request that the Court schedule a pre-motion conference so that Brilliance may seek permission to file a motion to dismiss patent infringement claims against it pursuant to Fed. R. Civ. P. 12(b)(6), which, if granted, would remove Brilliance from the present action.

Hon. Kenneth M. Karas
July 16, 2008
Page 2

Respectfully submitted,

COOPER & DUNHAM, LLP

By: Gregory J. Carlo
Gregory J. Carlo

Attorneys for Defendant Brilliance
Audio, Inc.

cc: John F. Hornick (by facsimile, confirmation by First Class Mail)
Edward D. Johnson (by facsimile, confirmation by First Class Mail)
Christopher J. Houpt (by facsimile, confirmation by First Class Mail)

The Court will schedule
a pre-motion conference on August 5,
2008, at 10:30 AM. Plaintiff has until
July 28, 2008
to respond to this letter.
SO ORDERED
KENNETH M. KARAS U.S.D.J.
7/16/08